

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

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JAMES FOX #458647,

Petitioner,

Case No. 1:12cv582

v.

Hon. Robert J. Jonker

JOHN PRELESNIK,

Respondent.

/

**ORDER**  
**APPROVING AND ADOPTING REPORT AND RECOMMENDATION**

The court has reviewed the Report and Recommendation filed by the United States Magistrate Judge in this action. The Report and Recommendation was duly served on the parties on February 24, 2014. No objections have been filed pursuant to 28 U.S.C. § 636(b)(1)(C).

**THEREFORE, IT IS ORDERED** that the Report and Recommendation of the Magistrate Judge, filed February 24, 2014, is approved and adopted as the opinion of the court.

**IT IS ORDERED** that respondent's motion to dismiss for failure to exhaust state court remedies (docket no. 15) is **DENIED**.

**IT IS ORDERED** that petitioner's motion to dismiss all unexhausted claims with prejudice (docket no. 31) is **GRANTED** and that all claims raised in the amended petition are dismissed with prejudice except for the following claims: the insufficient evidence claim set forth in Issue I; the prosecutorial misconduct claim arising from other bad acts evidence (i.e., the prosecutor presented evidence "of crimes not contained in the indictment information") as set forth in Issue I; and the ineffective assistance of counsel claim arising from trial counsel's failure to object to the admission of petitioner's audiovisual statement at trial as set forth in Issue IV.

**IT IS FURTHER ORDERED** that respondent file an answer to the amended petition within 90 days of the court's approval of this Report and Recommendation.

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/s/Robert J. Jonker

ROBERT J. JONKER

UNITED STATES DISTRICT JUDGE

Dated: March 20, 2014